

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 2770 OF 2023

Sarsa Dada Khilari & Ors.	...Petitioners
Versus	
The State of Maharashtra & Anr.	Respondents

CRIMINAL WRIT PETITION(ST) NO. 22844 OF 2023

Laxman Soma Khilari & Anr.	...Petitioners
Versus	
The State of Maharashtra	...Respondent

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Mr. Laxman Kalel, Advocate for the Petitioners in both Petitions.

Ms. K. T. Hivrale, APP for the Respondent No.1 – State in WP No.2770/2023.

Mr. V. A. Kulkarni, APP for the Respondent No.1 – State in WP (St.) No.22844/2023.

Mr. Prashant V. Nayak, Advocate for Respondent No.2 in both Petitions.

Mr. Pralhad P. Jamadar, (P.S.I.) Santacruz Police Station, Mumbai, present.

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CORAM	:	PRAKASH D. NAIK, & N. R. BORKAR, JJ.
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DATE	:	28th FEBRUARY, 2024.
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P.C.:

1. The Petitioners in both the Petitions are challenging the charge-sheet filed against them for offences punishable under Sections 498-A, 377 r/w Section 34 of Indian Penal Code (for short

“IPC”) arising out of First Information Report (for short ‘FIR’)

Corrected version of order dated 28.02.2024 pursuant to speaking to minutes of order dated 05.03.2024

No.1171 of 2022 registered with Santacruz Police Station, Mumbai dated 16.11.2022.

2. Heard both sides. Since the Court was not inclined to grant relief sought in the Petition preferred by the Petitioners in Criminal Writ Petition (St.) No.22844 of 2023, the learned Advocate for Petitioners on instructions sought permission to withdraw the said Petition.

3. Respondent No.2/Complainant has alleged that the marriage was performed on 03.06.2017. After the marriage, she joined matrimonial home. The husband, father-in-law, mother-in-law and the relatives of the husband ill treated her. She was abused and taunted. The harassment caused mental cruelty. All the accused had participated in torturing the Complainant/Respondent No.2.

4. Learned Advocate for the Petitioners submitted that the allegations against the Petitioners in Criminal Writ Petition No.2770 of 2023 are vague. On the basis of such frivolous allegations they cannot be prosecuted for the alleged offences. The Petitioner are unnecessarily dragged in this case. No specific overt act has been attributed to the Petitioners. The marriage was solemnized in 2017. The FIR was lodged in 2022. There was no demand of dowry.

Corrected version of order dated 28.02.2024 pursuant to speaking to minutes of order dated 05.03.2024

5. Learned A.P.P. appearing for the State submitted that specific role has been attributed to all the Petitioners. The offence under Section 498(A) of IPC is made out. This is not the stage to accept the contentions of the Petitioners. The trial must proceed. The complainant was subjected to ill treated by the Petitioners.

6. Learned Advocate for the Respondent No.2/Complainant submitted that the accused were involved causing harassment and mental torture. The FIR and the statements of witnesses are sufficient to prosecute the Petitioners for offence under Section 498(A) of IPC. The complainant in her statement has attributed specific overt act to the Petitioners. At this stage the version of complainant cannot be discarded and she must be given an opportunity to prove it in the trial.

7. We have perused the charge-sheet. As far as the Petitioners in Criminal Writ Petition No.2770 of 2023 viz the maternal aunt, uncle, cousin, paternal aunt and brother-in-law, we find that there is no material on record to prosecute them for the alleged offence. The allegations are vague. The relatives of husband cannot be dragged into the prosecution by making omnibus allegations in the FIR.

ORDER

- i. Criminal Writ Petition No.2770 of 2023 is allowed and disposed off.
- ii. The proceedings in C.C. No.PW/7101005/2023 pending before the learned Metropolitan Magistrate, Bandra are quashed and set aside against the Petitioners in criminal Writ Petition No.2770 of 2023.
- iii. Criminal Writ Petition (St.) No.22844 of 2023 is allowed to be withdrawn and stands disposed off accordingly.

(N. R. BORKAR, J.)

(PRAKASH D. NAIK, J.)